IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 406 of 1987

with

FIRST APPEAL No 1198 of 1986

&

FIRST APPEAL No 1199 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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GUJARAT STATE ROAD TRANSPORT

Versus

GOVINDDAS KALYANDAS DUDHREJIA,

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Appearance:

1. First Appeal No. 406 of 1987

MS MAYA DESAI for MR MD PANDYA for appellat

MR AB MUNSHI for MR AJ PATEL for Respondent No.1,2

MR RAJNI H MEHTA for Respondent No.3 to 5

None present for Respondent No. 6

MR SHANTILAL S SHAH for Respondent No. 7

2. First Appeal No 1198 of 1986

MR RAJNI H MEHTA for appellant

MR AB MUNSHI for MR AJ PATEL for Respondent No.1
None present for Respondents No.2,3
MR SHANTILAL S SHAH for Respondent No.4
MS MAYA DESAI for MR MD PANDYA for Respondent No.5

3. First Appeal No 1199 of 1986
MR RAJNI H MEHTA for appellant
MR AB MUNSHI for MR AJ PATEL for Respondent No.1,2,3
MR SHANTILAL S SHAH for Respondent No.4,7
None present for other Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE
Date of decision: 21/09/98

ORAL JUDGEMENT

#. As all these three appeals have arisen from one and the same motor vehicle accident and from the common award of the Motor Accident Claims Tribunal (Main), Rajkot District, Rajkot, in Motor Accident Claims Case No.191 of 1983 and No.33 of 1984, the same are taken up for hearing together and are being disposed of by this common order. Two claim petitions, namely Motor Accident Claims Case No.191/83 and No.33/84 arose out of one and the same accident which occurred on 25.2.83 at about 2:30 p.m. on Jamnagar-Rajkot road near Ghanteshwar as a result of collusion of three vehicles namely S.T. bus No.GRS-6807, Truck No.4124 and Tractor No.GRK-9645.

#. The first claim application has been filed by Govinddas Dudhrejia, the driver of the S.T. bus for claim of compensation as a third party in the accident for the injury sustained by him. The second claim application has been filed by the Gujarat State Road Transport Corporation, Ahmedabad, for the loss of property, i.e. bus which was caused in this motor vehicle accident. The learned Tribunal, after considering the oral and documentary evidence held that the driver of the tractor and truck were guilty to the extent of 50% while the driver of ST bus was held to be 50% negligent in this accident. The driver of the ST bus has claimed Rs.80,000/= as amount of compensation as against which the Tribunal has awarded him Rs.67,130/=, under the heads (i) Rs.20,000/= for pain, shock and suffering, (ii) Rs.3,000/= for medical and other charges, (iii) Rs.5730/= for loss of income, (iv) Rs.38400/= for future economic loss. In the claim application of the Gujarat State Road Transport Corporation for damage to the vehicle, the Tribunal has awarded Rs.6,157/=.

#. First Appeal No.406/87 arises from the Motor Accident

Claims Case No.191/83 filed by the Gujarat State Road Transport Corporation. The First Appeal No.1198/86 has been filed by the driver, owner and insurance company of Truck No.GTP-4124 on the issue of negligence and quantum, and arising out of Motor Accident Claims Case No.191/83. The First Appeal No.1199/86 has been filed by the driver, owner and insurance company of the Truck, arising out of Motor Accident Claims Case No.33/84 challenging the damage awarded to the Corporation by the Tribunal.

#. The learned counsel for the owner, driver and insurance company of the offending truck, Barrister R.H.Mehta, contended that the Tribunal has fallen in serious error in holding the driver of the tractor and truck to be negligent to the extent of 50% in this accident. From the evidence which has come on the record of the claim applications the driver of ST bus was wholly and solely negligent in this accident. On the quantum of compensation awarded by the Tribunal in favour of the driver of the ST bus, Mr.Rajni Mehta contended that the Tribunal should have awarded only what the entitlement of the driver could have been under the Workmen's Compensation Act, 1923. Lastly, Mr.Rajni Mehta contended that as it is a case of an accident resulted because of negligence on the part of the driver of the ST bus itself so whatever damages sustained by the ST bus could not have been ordered to be borne out to the extent as awarded, by the appellants, driver, owner and insurance company of the offending truck.

#. The learned counsel for the Corporation Ms.Maya Desai contended that the Tribunal has committed serious illegality in holding the driver of the bus of the Corporation to be negligent to the extent of 50%. The driver of the truck was wholly negligent in causing this accident. So the 50% apportionment made of the liability of the payment of award of compensation by the Corporation is illegal. It has next been contended that the Tribunal has fallen in error in holding the Corporation to be liable to make the compensation to the driver under the provisions of the Workmen's Compensation Act. The driver had chosen to approach the Motor Accident Claims Tribunal and as such, in such matter, the responsibility of the employer could not have been ordered for payment of compensation under the provisions of the Workmen's Compensation Act, 1923. In case the employee desires of claiming compensation under the Workmen's Compensation Act, 1923, he has to approach the Commissioner under the Workmen's Compensation Act, 1923. These two are the remedies available to the injured-employee in motor vehicle accident and once he

has availed of one remedy then whatever the entitlement and consideration which would have been available to him in another proceedings should not have been taken care of and are not of any value in these proceedings.

#. The learned counsel for the ST driver vehemently contended that these appeals filed by the Corporation and the driver, owner and the insurer of the offending truck are wholly misconceived. The truck driver was rightly held to be responsible for contributory negligence and once the finding has been recorded on appreciation of evidence on this question, inference by the appellate Court may not be called for. It is assessment of the contributing negligence of the two drivers made on the basis of appreciation of evidence by the Tribunal and in case where it is not perverse or where it is based on no evidence or non consideration of material evidence or on the basis of given set of evidence any reasonable man could have reached to that conclusion or even if two views are possible on one set of evidence, this Court may not interfere with the finding of fact recorded. Lastly, it is contended by the learned counsel for the driver of the ST bus that the driver has all his right to approach both, the motor vehicle accident claims Tribunal or the Workmen's Compensation Tribunal, whichever is more beneficial to him. However, in case he approached to the Motor Accident Claims Tribunal and in the proceedings he may not be found entitled for any compensation or the compensation is less than what he has claimed still he cannot be non suited where the Tribunal finds he would have been entitled for compensation for the injury caused to him in an accident arising out of and during the course of employment under the provisions of the Workmen's Compensation Act, 1923.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Appeals under Section 110D of the Motor Vehicles Act, 1939, are not regular appeals as what is provided under Section 96 read with Order 41, Rule 1 Civil Procedure Code, 1908 against the decree. This are miscellaneous appeals provided under a special statute. Though the present appeal is registered as First Appeal, it is an appeal in the matter of awarding of compensation to the claimant for the injury which is caused to him in a motor vehicle accident and as a result thereof, he has sustained permanent partial disability and consequently the Tribunal has awarded compensation to him. In such appeals, mainly three vital issues do arise, namely, (i) whether the injury sustained by the claimant is as a

result of the motor vehicle accident caused by the driver of the vehicle driving the same rashly and negligently or as a result of motor vehicle accident caused by other vehicle and the claimant is third person qua that vehicle, (ii) regarding defence taken by the driver and the owner of the offending vehicle as well as statutory defence taken by the insurance company, and (iii) what should be just, adequate and reasonable compensation to be awarded to the claimant.

#. The first issue relates to negligence of the driver in driving of the offending vehicle as a result of which the injured sustained injuries and consequent disability in his body. I find sufficient merits in the contention of the learned counsel for the claimant that the question of negligence or contributory negligence, as the case may be, is purely a question of fact and where the Tribunal, after appreciating the evidence of the parties records a finding on this question, normally, the appellate Court should be very very slow to interfere with it. In the matter of apportionment of contributory negligence amongst two drivers of the offending vehicles, interference of this Court with the finding of fact recorded should be only in exceptional cases where it on the basis of the evidence of the parties is satisfied that the finding recorded by the Tribunal are ex-facie arbitrary, perverse and no reasonable man could have reached to those findings on the basis of evidence of the parties. It may interfere with the finding of fact where the appellate Court satisfies that the learned Tribunal has not considered material piece of evidence which has come on the record of the case and further where material piece of evidence has been misread. If the case does not fall in any of the aforesaid categories then this Court though is an appellate Court over the decision of the Tribunal, may not interfere with the finding of fact recorded by Tribunal. I have gone through the findings of the Tribunal on this question of contributory negligence and having glanced the evidence produced by the parties with the help of learned counsel for the parties, I do not find any infirmities or palpable or manifest error on the face of the judgment in holding all the drivers of the three vehicles to be contributory negligent, which calls for interference of this Court. The learned counsel for the claimant-respondent, driver of the ST bus is correct to say that this finding of contributory negligence of the drivers of the offending vehicles are findings of fact. When it is a finding of fact, then the appellate Court can only interfere where the appellant has made out a case falling under the category of perverse finding or the finding based on no

evidence or misreading of evidence etc. The learned counsel for the appellants in these Appeals have failed to point out anything from the judgment of the Tribunal that any important and material piece of evidence has altogether been not considered by the Tribunal. Similarly, they have utterly failed to point out that the view taken by the Tribunal in the present case on the question of contributory negligence could not have been taken on the basis of evidence of the parties which has come on record. It is no more res-integra that on the given set of evidence, if two views are possible, then the appellate Court should not interfere with the impugned award or judgment of the Tribunal. Having these considerations in mind if we examine the case in hand on the touchstone of these ingredients or requirements of law, I am of the opinion that the Tribunal has not committed any illegality which calls for interference of this Court on this issue.

##. Much emphasis has been laid by the learned counsel for the insurance company that due care and caution has not been taken in maintenance of ST bus and further any checking of the same by the employees of the Corporation before the same are being sent on the road are not done. By referring to certain records of the Corporation's depot, the learned counsel for the insurance company tried to contend that the driver himself has not taken care to see and check-up that the brakes of the vehicle were properly working. The plea of the driver was that the accident has resulted because of failure of brakes of the bus. The Tribunal has considered each and every aspect of the matter and I do not find any illegality in the finding of the Tribunal where the driver of the bus himself was held to be contributory negligent in this accident to the extent of 50%. This is what the learned Tribunal has recorded on the basis of evidence of the parties and after due appreciation thereof. It being a finding of fact and more so as it does not suffer from any of the infirmities of the character and nature as aforesaid, no exception can be taken to such finding.

##. So far as the quantum of amount of compensation is concerned, in view of the concession made by the learned counsel for the claimant - driver of the ST bus, nothing more is required to be gone into on this question. As against this claim of Rs.80,000/= the claimant-respondent, the driver of the ST bus restricted his claim in these proceedings for Rs.42,000/= which he would have been entitled as an employe, for the injury under the Workmen's Compensation Act, 1923. The award passed by the Motor Accident Claims Tribunal, Rajkot

District, Rajkot, in Motor Accident Claims Case No.191/83 is modified to the extent that the claimant respondent-driver of the ST bus is entitled for Rs.42,000/=, being the total amount of compensation together with interest thereon at the rate of 6% p.a. from the date of application till realization. Out of this amount of compensation, the liability of the owner, driver and insurance company of the offending truck shall be Rs.21,000/= and that of the Gujarat State Road Transport Corporation, Rs.21,000/=. They shall also be liable to pay interest on this amount proportionately at the rate of 6% p.a. from the date of application till the date of realization. It is made clear that in case the deposit of the amount of compensation made by either of the parties, i.e. the driver, owner and insurance company of the truck or the Gujarat State Road Transport Corporation is found in excess of their liabilities for compensation and interest thereon, the same shall be refunded to that extent to the respective parties, i.e. with respect to the excess amount of compensation as well as interest on the excess amount. To that extent, the Appeal of the Corporation and the insurance company, i.e. First Appeal No.406/87 and First Appeal No.1198/86 are partly allowed.

##. The award of Rs.6,157/= of the Tribunal towards damages to the ST Corporation does no call for any interference. It is a case where the accident has resulted because of negligence on the part of the driver of the offending truck to the extent of 50% and as such to that extent, it is the liability of the insurance company to make good the loss to the Corporation. The learned counsel for the insurance company is unable to show how this award of compensation towards the damages of the vehicle to the Corporation is perverse. This Appeal is therefore rejected. The parties are directed to bear their own costs in all these three Appeals.

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(sunil)